

### **Introduction**

This guide provides a uniform approach to determine the most appropriate course of action in situations related to employee conduct and discipline.

You are responsible for maintaining consistency within the California Department of Forestry and Fire Protection of the types and methods used to enforce acceptable standards of behavior and work performance. This is accomplished in three ways: 1) through counseling supervisors and management on proper documentation and procedures, 2) through determining the appropriate action based upon the facts, and 3) by recommending the appropriate action to the designated appointing authority for approval.

### **Formal Adverse Actions**

All adverse actions become a permanent part of the employee's personnel file and the State Personnel Board's (SPB) record. An adverse action, with the exception of a Letter of Reprimand, is only removed from the employee's personnel file when a stipulation is entered into, when the SPB directs us to do so, or in accordance with a M.O.U. Although the SPB Office of Information Practices recommends that adverse action records should not be kept in the employee's personnel file permanently, actual practice indicates that this is best left to the discretion of each department. Letters of Reprimand must be removed from an employee's personnel file no later than three years from the date of issue in accordance with Government Code section 19589.

### **TYPES OF ADVERSE ACTIONS** (September 1988)

#### **1092.1**

- Official Reprimand--appropriate when informal corrective action has not been effective. It is often appropriate to make an employee realize that prior warnings, both verbal and written, are serious and can be followed by more serious actions.
- Suspension Without Pay--the employee is barred from working for a specified period of time and his/her salary is docked accordingly. This action may be taken against employees with permanent or probationary status. As a suspension is a temporary separation, any holiday falling within or at the end of the time period is counted as a working day. The holiday is considered a day of suspension and the employee is not paid for the holiday.

- Reduction of Pay--usually used in place of a suspension against an employee whose continued service on the job is of value. This is recommended in lieu of suspensions for employees with serious AWOL problems. This would also be appropriate for actions against permanent intermittent employees. The reduction can be one or more steps down to the minimum of the salary range. It can be for a specific period or it can be without time limit so that the employee will be required to earn salary adjustments annually. One salary step reduction for one month equals one day suspension.
  - Suspension for one to five working days or equivalent salary reduction is often used for the first formal action after counseling and Letters of Warning have failed to correct the situation.
  - Suspension for six to 20 working days or equivalent salary reduction is often used for the second and third adverse action or possibly a first action for a serious infraction or a combination of serious offenses.
  - Suspension for 21 or more working days or equivalent salary reduction is usually used where circumstances require exceedingly severe punishment for an employee whose services the state wishes to retain.
- Demotion to a lower class--may be used in place of a suspension against an employee whose continued service is of value, but not at their current classification. This should be used only when an employee qualifies for and can be expected to do a satisfactory job at the lower level. Demotion can be to the maximum salary of the next lower class or to a lower step than maximum. The action must contain the exact salary for each class. A demotion may be permanent or temporary. For temporary demotions, the employee will return on a specified date to the higher class at the higher salary. Temporary demotions are not usually recommended from a supervisor level to a rank and file level unless the employee can be placed into another unit or crew for the period of demotion.
- Dismissal from state service--used for a serious infraction, continued failures in work performance, and/or continuing offenses that can no longer be tolerated. Except in very unusual circumstances, a dismissal is preceded by prior adverse actions.

## CAUSES FOR ADVERSE ACTIONS AND DEFINITIONS OF CAUSES

(No. 20 October 1990)

1092.2

The causes for adverse action are based on Government Code section 19572 and 19573. Under 19572, the following causes for discipline are listed:

- (a) Fraud in securing appointment is used when employees falsify information about their education, experience, or health to so great a degree that they would not have qualified for the position. This can also be used when an employee omitted an extensive criminal record with recent serious convictions. This cause is used to cover cheating in examinations or otherwise using illegal help to obtain employment.
- (b) Incompetency is used only when the employee cannot, in the opinion of his/her supervisors, satisfactorily perform the work required of the position.
- (c) Inefficiency is used in the case of the employee who appears to have the necessary ability, but for some reason does not produce in a satisfactory manner or does not see that the work is done. This is frequently used with other causes when it is believed that the inefficiency is related to other failures.
- (d) Inexcusable neglect of duty is used when an employee fails to follow well-known and accepted procedures for the work, is careless, and/or fails to do the work properly or safely.
- (e) Insubordination is used when an employee has shown an outspoken or mutinous attitude toward those in charge or has shown a flaunting disregard of the authority of a supervisor.
- (f) Dishonesty is used for any false information on a sick leave request, expense account, or other official document, and for misappropriation or theft of state property or funds. Collection or reimbursement from the employee for loss of funds should be referred to the Accounting Office.
- (g) Drunkenness on duty is used when there is intoxication on duty but not drinking on duty. An employee who takes drinks during working hours but does not get drunk is normally not charged under this particular cause. In the case of drinking on duty, it may be proper to use (c), (d), (h), or (t).
- (h) Intemperance is used in cases of continued or excessive drinking or use of narcotics. It also applies to angry outbursts, violent actions, or other acts showing lack of moderation.

- (i) Addiction to the use of narcotics or habit-forming drugs--the word "addiction" implies the continued use of drugs or the compulsion to use them.
- (j) Inexcusable absence without leave is used for tardiness (when an employee is docked), for unapproved sick leave or vacation, or for absence from the work area. An absence of five consecutive working days is covered in the Supervisor's Guide ([Section 1091.6.4](#)) under AWOL separations.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude--the phrase "involving moral turpitude" involves an element of baseness or dishonesty that could cause other persons to hold the person in disrespect. Stealing (whether the conviction is petty theft or grand theft), embezzlement, sexual crimes, use and possession of narcotics and drugs, etc., would involve moral turpitude.
- (l) Immorality--it has never been clearly established whether this particular cause must be connected with immorality at work or not. Unless the immorality comes within one of the other causes, it is better not to base the adverse action on this charge.
- (m) Discourteous treatment of the public or other employees is used to support actions against employees who are rude, abusive, or take violent action against their supervisors or fellow employees or who fail to give the public proper service. It is frequently used with cause (t).
- (n) Improper political activity (and other incompatible activities) is based on Government Code section 19990. Further restrictions are found in the Incompatible Activities Statement. A violation under this cause would also be under cause (r).
- (o) Willful disobedience includes any intentional violation of instructions, orders, rules, or regulations.
- (p) Misuse of state property applies to any case where an employee uses or takes state equipment or property without authorization, damages or loses it through lack of care, uses it for personal business, or demonstrates lack of good judgment in its use. For any of these or other reasons involving misuse of state property when cited as a cause for adverse action, refer to Department of Personnel Administration Rules 599.802 - 599.809 (state-owned vehicles) which defines misuse and describes appropriate action to be taken (including collection for damage).

- (q) Violation of this part or board rule is used if there is a specific section which has been violated in the Civil Service Act (Government Code, Title 2, Division 5, Chapters I- II). State Personnel Board Rule 172 is a "catch-all" and should not be used if there are sufficient other specific causes which apply. It is primarily used for failure to meet conditions of employment (such as license requirements).
- (r) Violation of the prohibitions set forth in accordance with Section 19990--all incompatible activity falls within this cause.
- (s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the person's employment.
- (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the employee's agency or employment.
- (u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled--not applicable to CAL FIRE.
- (v) The use during duty hours, for training or target practice, of any material which is not authorized therefore by the appointing power--usually not applicable to CAL FIRE.

## **OFFENSES AND CORRESPONDING ADVERSE ACTIONS 1092.3**

(No. 20 October 1990)

Various offenses and the suggested adverse actions are listed as an aid toward achieving uniformity. It is impossible to develop any formula that will determine the proper action in every situation. Each case must be considered and decided on the circumstances. This section is only a guide and should only be used as a general reference. Specific circumstances of a case may deem it appropriate to take an action of a greater or lesser degree than is indicated. What adverse action will correct the performance/behavior should be a primary consideration.

Legend--

Offense means an undesirable act or an omission in performance on the part of an employee for which the person receives a formal adverse action.

Corresponding Adverse Actions:

- |                                   |              |
|-----------------------------------|--------------|
| 1. Official Reprimand             | 3. Demotion  |
| 2. Suspension/Reduction in Salary | 4. Dismissal |
| a) to 5 days/months               |              |
| b) to 20 days/months              |              |
| c) over 21 days/months            |              |

OFFENSES	CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
	1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
	OFFENSE		OFFENSE		OFFENSE		
A. PERFORMANCE ON THE JOB	Min.	Max	Min	Max	Min	Max	
1. Failure of a supervisor to take corrective disciplinary action where such action is needed, or to report instances of delinquency or misconduct of subordinates to the proper official.	1	2a	2a	2c	3	4	c,d,o
2. Failure to maintain prescribed records (logs, field notes, etc.), or to prepare prescribed reports.	1	2a	2a	2b	3	4	c,d,o
3. Falsification of prescribed records or reports (attendance records, DPVs involving monetary gain, etc.).	2b	4	3	4	4	-	c,f

OFFENSES		CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
		OFFENSE		OFFENSE		OFFENSE		
		Min.	Max	Min	Max	Min	Max	
4.	Misuse of state property or federal excess property causing damage or destruction.	1	2a	2a	2b	2b	3	c,d,p
5.	Carelessness, indifference, laziness, lack of alertness, and inattention to duty resulting in poor work.	1	2a	2a	2b	2b	3	b,c,d,o
6.	Carelessness which results in misappropriation of state funds or of other funds which come into employee's possession without personal gain.	2a	2b	2c	3	3	4	d,f,o,t
7.	Negligence in performing official duties, including failure to follow instructions or regulations.	1	2a	2a	2b	2b	4	c,d,o
8.	Asleep on duty.	1	2a	2a	3	2b	4	c,d
9.	A number of instances involving carrying on personal business during working hours; amount of time involved should influence severity of action.	1	2a	2a	2b	2b	4	c,d,t

CORRESPONDING ADVERSE  
ACTIONS

\*G.C.  
SECTION

OFFENSES

1 <sup>st</sup> OFFENSE		2 <sup>nd</sup> OFFENSE		3 <sup>rd</sup> OFFENSE	
Min.	Max	Min	Max	Min	Max

B. INEXCUSABLE ABSENSE WITHOUT LEAVE

1. Failure to report to work at the specified times and in the prescribed manner.	1	2a	2a	2b	2b	2c	d,j,o
2. Leaving a work area or a job when specifically instructed to remain in the work area or at the work area or at the job.	1	2a	2a	2b	2b	4	d, e, j, o
3. Absence from duty on consecutive working days without permission, without adequate justification, or after being denied permission to take a leave.	1	4	2a	4	2c	4	d,j,o
4. Irregular attendance without permission over a period of time (if pay is docked for the time and employee told it is unacceptable). Reduction in salary more appropriate action than suspension.	1	2a	2a	2b	2b	4	d,j,o



CORRESPONDING ADVERSE  
ACTIONS

\*G.C.  
SECTION

OFFENSES

1 <sup>st</sup> OFFENSE		2 <sup>nd</sup> OFFENSE		3 <sup>rd</sup> OFFENSE	
Min.	Max	Min	Max	Min	Max

C. RELATIONS WITH SUPERVISORS, FELLOW EMPLOYEES, THE PUBLIC, AND OTHERS

1. Endangering self, fellow employees, or public through careless or willfull violation of safety rules.	1	2b	2a	3	2c	4	d,m,o,t
2. Refusal to comply with a reasonable and proper order or instruction from a supervisor.	1	2b	2a	2c	2b	4	d,e,m,o
3. Failure to cooperate with other employees.	1	2a	2a	2b	2b	3	m
4. Threatening, attempting, or doing bodily harm to a supervisor, a fellow employee, inmate and ward of the state, or the public.	2a	4	4	-			e,m,p,t
5. Using insulting or abusive language to a supervisor, a fellow employee, or the public.	1	2a	2a	2b	2b	4	e,m,o,t
6. Failure to exercise proper supervision over subordinates or inmates and wards of the state, which resulted in bodily harm or which made it possible for immoral practices to take place.	2a	4	3	4	4	-	c,d,o

OFFENSES	CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
	1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
	OFFENSE		OFFENSE		OFFENSE		
	Min.	Max	Min	Max	Min	Max	
7. Using or permitting the use of force resulting in bodily harm to others.	2a	4	2b	4	4	-	m,o
8. Engaging in or condoning discrimination regarding race, color, religion, national origin, ancestry, sex, age, physical disability, or sexual orientation.	See Personnel Handbook Section 1400						
9. Engaging in “horseplay” during working hours.	1	2a	2a	2b	2b	2c	d,m,o,t

**D. USE OF ALCOHOLIC BEVERAGES, NARCOTICS, OR HABIT FORMING DRUGS -- NON-SENSITIVE POSITIONS.**

1. Inability to perform the duties of the position because of the use of alcohol or drugs.	1	3	2a	4	2c	4	b,c,d,g,h,i,o
2. Operating state equipment while under the influence of intoxicating liquor or drugs (EAP program should be suggested after first offense).	2a	3	2b	4	4	-	d,g,i,o,p
3. Drinking intoxicating liquor or using illegal/intoxicating drugs during working hours.	2a	4	2b	4	4	-	d,h,i,o

OFFENSES	CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
	1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
	OFFENSE		OFFENSE		OFFENSE		
	Min.	Max	Min	Max	Min	Max	
E. USE OF ALCOHOLIC BEVERAGES, NARCOTICS OR HABIT FORMING DRUGS -- <u>SENSITIVE POSITIONS</u>							
1. Found under influence of illegal drugs while on duty, on stand by, or on call.	4	4	4	4	4	4	d,h,i,o
2. Found legally drunk while on duty.	4	4	4	4	4	4	d,g,h,o
F. MISUSE OF STATE PROPERTY							
1. Using or authorizing the use of state-owned or leased property for other than official use.	1	4	3	4	-	-	d,o,p
2. Failure to have state equipment properly serviced resulting in damage to the equipment.	1	2b	2a	4	2c	4	d,p
3. Employee failure to wear seat belts and available shoulder harness.	**	1	1	2b	2a	2c	d,o,p
4. Supervisor failure to enforce the wearing of seat belts and shoulder harness.	**	2b	2a	4	2b	4	c,d,o
5. Willful or careless destruction of or damage to state property.	1	4	2a	4	2b	4	d,o,p

CORRESPONDING ADVERSE ACTIONS							*G.C. SECTION
OFFENSES	1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
	OFFENSE		OFFENSE		OFFENSE		
	Min.	Max	Min	Max	Min	Max	
6. Causing avoidable accident, resulting in damage to state property (not vehicle accident).	1	2b	2a	4	2c	4	d,o,p
7. Failure to report accident to state equipment assigned to employee.	1	2c	2a	4	4	-	d,o,p
8. Operating state vehicle in unsafe manner resulting in damage to state equipment or to other property.	1	4	2a	4	2b	4	d,o,p,t
9. Convicted of driving while under the influence of intoxicating liquor or drugs when operating state equipment.	2b	4	4	-			d,g,h,i,o,p
10. Damaging state equipment while operating it under the influence of intoxicating liquor or drugs.	2b	4	4	-			d,g,h,i,o,p

OFFENSES	CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
	1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
	OFFENSE		OFFENSE		OFFENSE		
	Min.	Max	Min	Max	Min	Max	
11. Proven operator damage in failure to use or properly use engine or truck chock blocks; driving too fast for road cautions; failure to use available back-up person, under nonemergency conditions, when backing an engine or truck; or failure to adhere to safe driving practices when operating <u>any</u> state vehicle.	***	3	3	4			d,o,p,t
12. Causing a vehicle accident by following too closely or by mechanical failure due to operator negligence in not performing preventive maintenance.	****	2b	2b	3	4	-	d,o,p,t

CORRESPONDING ADVERSE  
ACTIONS

\*G.C.  
SECTION

OFFENSES

1 <sup>st</sup> OFFENSE		2 <sup>nd</sup> OFFENSE		3 <sup>rd</sup> OFFENSE	
Min.	Max	Min	Max	Min	Max

G. OTHER ACTS OF MISCONDUCT OR INCOMPATIBILITY

1. Willful falsification of application for employment or other personnel records with respect to a material point which would have adversely affected selection for appointment.	##	4	##	4				a,f
2. An employee allowing another person to take a state Civil Service examination for him/her or taking the exam for another person.	4	-						a,c,d,f
3. Failure to comply with proctor's instructions and/or bulletin language during exam (cheating, calculator use, etc.)	##	4	##	4	4	-		a,f
4. Disclosure of confidential exam info by consultants or panel members.	##	4						a,f
5. Violation of any specific provisions of State Civil Service Act (Part 2, Division 5, Title 2, of the Government Code) or of a specific State Personnel Board rule.	1	4	2c	4	4	-		q
6. Violation of the recognized code of ethics of his or her profession.	1	4	2a	4	4	-		d,f,n,r,t

OFFENSES		CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
		OFFENSE		OFFENSE		OFFENSE		
		Min.	Max	Min	Max	Min	Max	
7.	Submission of willfully false financial records, such as travel, payroll, or purchase vouchers, or their supporting documents.	2a	4	2b	4	4	-	f,o
8.	Willful falsification of any public record, including sick leave request forms, attendance records, and workers' compensation forms.	2a	2b	2b	4	4	-	d,f,o,t
9.	Concealment of material facts by willful omission from official records.	1	2b	2a	4	4	-	a,d,f
10.	Unauthorized taking of property belonging to the state, inmates and wards of the state, or other employees.	2a	4	4	-			d,f,o,p
11.	Failure to adhere to state Incompatible Activities Policy.	1	4	2a	4	4	-	f,n,r
12.	Gambling on the job (on state time or property).	1	2b	2a	2c	2b	4	d,o
13.	Accepting or asking for gratuities from citizens for services rendered.	1	4	2b	4	4	-	f,o,t

OFFENSES		CORRESPONDING ADVERSE ACTIONS						*G.C. SECTION
		1 <sup>st</sup>		2 <sup>nd</sup>		3 <sup>rd</sup>		
		OFFENSE		OFFENSE		OFFENSE		
		Min.	Max	Min	Max	Min	Max	
14.	The use of state time or state property, or the prestige and influence of the employee's official position, to advance the political interest of any person or the interest of any political party.	1	4	4	-			f,n,o,p,t
15.	Accepting gifts from any individual, firm, or organization doing business with the state when the employee is responsible for making any recommendations or decisions affecting the business activities of the individual, firm, or organization, or for inspecting work performed by such individual firm or organization.	2b	4	2b	4			d,f,t
16.	Improper disclosure of confidential information.	1	4	2b	4	2c	4	d,fo,t
17.	Failure to maintain personal appearance appropriate for the job.	1	4	2b	4	2c	4	d,t
18.	Using for private gain or advantage the time, facilities, equipment, or supplies of the state.	1	4	2a	4	4	-	d,o,p,t

\*Possible subsection of Government Code Section 19572 which applies.

\*\*Letter of Warning.



@ @The minimum action will be a one-step reduction in pay for two months.

^ ^The minimum action will be a one-step reduction in pay for one month.

##Contact Departmental Personnel Office. A withhold from exam process and other options may be appropriate.

## **STATUTE OF LIMITATIONS**

**1092.4**

(No. 20 October 1990)

GC section 19635 limits adverse actions to those acts which have occurred within three years of the effective date of the adverse action. In the case of fraud, embezzlement, or falsification of records, the action must be served within three years of discovery.

## **AUTHORITY TO TAKE FORMAL ADVERSE ACTION**

**1092.5**

(No. 20 October 1990)

The authority to take formal adverse action against a CAL FIRE employee is vested with the department's Director (the appointing authority). By delegation from the Director, Regional Chiefs, Deputy Director, and the Assistant Director have authority to prepare, serve, and sign adverse actions, except for the following:

- When the action is taken as a result of an incident involving sexual harassment and/or discrimination, or
- The action is a dismissal.

In these instances, approval authority remains with the Director.

It is understood that persons taking the actions under this authority are held accountable for all rules, procedures, and administrative processes as provided in the Government Code.

Delegation includes the responsibility to prepare all written actions, ensure that there is proper documentation, and represent CAL FIRE at all hearings on actions taken.

Those employees with delegated authority will 1) provide copies of the action and all backup material to DPO for filing with the SPB and the Attorney General's office, 2) negotiate on behalf of CAL FIRE settlements of the action taken, and 3) conduct or assign a designee to conduct the Skelly hearing.

## **ORDERED LEAVES OF ABSENCE**

**1092.6**

(No. 20 October 1990)

This should only be used when dismissal is being considered for serious infractions for the following causes listed in Government Code section 19574.5:

- Misappropriation of public funds or property.
- Drug addiction.
- Immorality.
- Acts which would constitute a felony or a misdemeanor involving moral turpitude.

Ordered leaves of absence must have advance verbal approval by the regional chief, or the appropriate Deputy Director with notice to DPO. After notifying DPO, the delegated authority may sign the notice.

A Preliminary Notice of Adverse Action is a written notice ordering the employee on a leave of absence without pay not to exceed 15 days ([see exhibit](#)) . This notice is served on the employee pending final preparation of an official Notice of Adverse Action. The leave of absence may be terminated by giving the employee 48 hours notice in writing.

The final Notice of Adverse Action must be served on the employee and filed with the State Personnel Board within 15 calendar days from the date of the ordered leave of absence or the leave without pay becomes leave with pay. The effective date of the Notice of Adverse Action shall follow the normal procedures requiring a minimum five-day Skelly period from the date of the service of the action.

In order to ensure the employee does not return to work prior to the effective date of the adverse action, the adverse action should be served no later than the tenth day of the leave with an effective date on the fifteenth day.

Ordered leaves of absence are to be used only for extreme cases. An example of an inappropriate use of ordered leave would be when an employee is drunk on the job.

## **PREPARATION AND SERVICE OF ADVERSE ACTIONS**

**1092.7**

(No. 20 October 1990)

Administrative officers are responsible for the following:

### **Reviewing the Supervisor's Report to determine**

- Whether an adverse action is appropriate based on the facts.
- That the employee was informed both verbally and in writing of problems and what performance/behavior needed to be corrected.
- Whether any MSA/SISA/range changes, Reports of Performances (ROP), or appraisals given as part of an examination process during the period of time were appropriate and consistent with the proposed action. When approval of the MSA/SISA/range changes have occurred, the ability to refer to performance problems prior to the salary adjustment is greatly diminished. Reports of Performance and appraisals should document performance problems and support the adverse action recommended.
- Whether there is any indication of personal problems and whether the employee has been referred to the Employee Assistance Program.
- Consistency of the proposed action with any adverse actions previously taken for similar offenses by other employees.
- Whether offenses are within the statute of limitations.

### **Preparing the Adverse Action**

- Follow correct format ([see exhibit](#)) and ([see exhibit](#)) .
- Determine charges under Government Code section 19572 (refer to section on causes for adverse actions) and ensure that backup material supports the charges.
- Obtain appropriate level of approval (refer to section on authority to take adverse action).

- Determine the effective date. The time required between the service and the effective date for employee to respond must be considered. At a minimum, five calendar days must elapse between service and effective dates (refer to the guide to the Skelly Hearing Process for guidance). Any employee on Industrial Disability Leave (IDL) should return to work prior to the service of an adverse action. The DPO should be contacted before considering serving actions on employees before they return to work.
- Obtain the correct number of copies. Adverse actions require the original and six copies to be distributed as follows:
  - 1 - employee (original)
  - 1 - employee's supervisor
  - 1 - region office or Headquarters Deputy Director
  - 1 - employee's official file (in decentralized regions)
  - 3 to 4 - DPO, for the employee's official file (for centralized regions and Sacramento employees only); the adverse action file; the SPB Hearing Officer; and the Attorney General's office.
- One copy of all backup material should be sent to DPO.

### **Obtaining Approval**

Administrative officers should establish their own internal procedures for obtaining the appropriate approvals from the region chief or Headquarters Deputy Directors. The delegated authority signs the last page of the original adverse action. It is recommended that the internal procedures provide that appropriate persons on the chain of command review and be aware of any adverse actions taken.

### **Ensuring Service of Adverse Action and Distribution of Copies**

- Verify that all required approvals have been obtained.
- Verify the effective date is still within the time frame allowed in the Skelly Hearing process.
- Notify the immediate supervisor when the adverse action is ready to be served.

- Service by Mail
  - Original shall be mailed registered with return receipt requested to last known home address (or place employee is known to be). Service is complete on the date of mailing according to Government Code section 18575.
  - Person actually placing the adverse action in the U.S. mail signs one copy of the completed Declaration of Service ([see exhibit](#)) .
- Service in Person
  - Person serving the adverse action must be a disinterested party (not the person who prepared the action nor anyone in the employee's chain of command).
  - Original is sealed in an envelope with the employee's name typed on it.
  - Person serving the adverse action makes sure who the employee is, hands him/her the adverse action, and leaves.
  - Person serving the adverse action signs one copy of Declaration of Service.

When an employee responds to the adverse action and/or there are amendments, the administrative officer follows the procedures outlined in the Skelly Guide and sends copies of any amendments to the same offices (in the same numbers) as was followed in the original adverse action.

## **AMENDED ADVERSE ACTIONS**

**1092.7.1**

(No. 20 October 1990)

Adverse actions may be amended by action of the appointing authority or as a result of a Skelly hearing at any time prior to the State Personnel Board's receipt of the employee's appeal. Amendments may change the effective date, the type of action taken, the causes cited, and/or the charges in the adverse action. The amended action is served on the employee and filed in the same manner as the original action ([see exhibit](#)) .

Under Government Code section 19575.5, no additional response is permitted for the employee (another Skelly hearing is not required), but additional time to prepare for the appeal hearing may be provided.

If the amended action does not contain new causes or charges, the original appeal period will remain in effect. Under extremely rare circumstances, a new 20-calendar-day appeal period may be granted when the amended action contains new causes or charges. This is done by including the appeal paragraph in the Notice of Amended Adverse Action. This is subject to the approval of the SPB Hearing Officer. Regions should contact DPO for assistance in obtaining this approval.

## **STIPULATIONS**

**1092.7.2**

(No. 20 October 1990)

After the appeal has been received by the State Personnel Board, the adverse action may be amended by stipulation. The Attorney General's office prepares the stipulation and it is not effective until it has been approved by the five- member State Personnel Board.

## **RESIGNATION IN LIEU OF ADVERSE ACTION**

**1092.8**

(No. 20 October 1990)

Prior to service of an adverse action, an employee may announce an intent to resign or ask to resign. It is an employee's right to resign under any circumstances and he/she cannot be prevented from doing so. The supervisor should be careful to give correct information in answer to any questions that the employee may have concerning his/her status if he/she resigns. A supervisor must never bring up the subject of the possibility of resignation nor suggest it to the employee before service of the adverse action. If a supervisor says, "Unless you resign, you will be dismissed!" or a similar statement, the resignation will be considered under duress and subject to appeal within 30 days of the effective date of the resignation. The resignation must be entirely voluntary in order to avoid the possibility of its being set aside because it was a result of "mistake, fraud, duress, or undue influence."

After service of an adverse action for dismissal, the employee should be given at least one full working day, in addition to the mandatory five calendar days prior to the effective date of the action, to consider whether to resign or elect to have the adverse action for dismissal stand.

If the employee elects to resign in lieu of dismissal, the employee should be requested to sign the following statement, which should be filed in the employee's official personnel file.

"I was advised on   (date)   that the Department of Forestry and Fire Protection proposed to take steps to dismiss me for cause as set forth in Government Code 19572. I may voluntarily resign in lieu of having an adverse action for dismissal taken against me.

I have been advised that I could consult a representative of my choosing in arriving at my decision and have been afforded a full 24 hours to consider my decision. I have elected to voluntarily resign effective           (date)          ."

If the adverse action has been filed with the SPB and the employee does elect to resign in lieu of dismissal, the SPB hearing officer must be notified immediately. This notification is a "Notice of Rescinded Adverse Action" (see exhibit) . The notice must be signed by the person who signed the original adverse action. The employee must be informed that a copy of the action served will remain on file, the resignation will be with fault, and he/she may appeal this to the State Personnel Board to have his/her record cleared. A copy of the adverse action should be placed in the employee's personnel file, the employee Personnel Action Request should be coded as a resignation with fault, and a notation should be made on the Personnel Action Request.

If an employee elects to resign prior to being served with the adverse action and the circumstances do not warrant that the resignation be with fault, the DPO should be contacted for advice.

If the employee decides to resign or retire after service and after the adverse action has been filed with the State Personnel Board, the lump-sum payment for vacation or any other leave credits may be affected. This occurs when the adverse action served is for a reduction in pay or a demotion. Under those circumstances, the lump-sum payment beginning with the effective date of the adverse action will be made at the lower rate of pay specified in the adverse action. If the amount of vacation credit exceeds the period specified for the demotion or pay decrease, the employee will be paid at the higher rate of pay for the excess time. The employee must be given a letter explaining this fully (see exhibit) .

## **WHEN AN EMPLOYEE IS DISMISSED**

**1092.9**

(No. 20 October 1990)

<b>Eligible Lists</b>	Dismissal removes the person's name from all eligible lists.
<b>Salary and Accumulated Overtime</b>	Dismissal terminates the salary of the employee on the effective date of the dismissal. For pay purposes, all accumulated compensating time off is paid lump-sum.
<b>Payment for Vacation Credit</b>	The employee is entitled to lump-sum payment for all vacation hours accumulated as of the date of separation. When there has been no loss to the state in money or property as a result of actions by the employee, payment in full should be made. Where there has been a loss of state funds and/or property as a result of actions by the employee, lump-sum payment for unused vacation credit is withheld until the amount owed by the employee is determined. A statement that indicates the payment will be withheld should be included in the Notice of Adverse Action. If the dismissal is appealed before the amount owed has been computed, the amount of loss to the state will be determined during the hearing and will be deducted to the

extent legally possible from the lump-sum payment for vacation credit. This is subject to the Income Protection Act.

## **EMPLOYEE'S RIGHT TO APPEAL ADVERSE ACTIONS** **1092.10**

(No. 20 October 1990)

Appeals to adverse actions are made directly to SPB. When an appeal is filed, the hearing is before a hearing officer appointed by the SPB. Only actual witnesses to the employee's offenses and a representative of management usually attend the hearing. Legal counsel specifies who will be needed at the hearing. Following the hearing, the hearing officer prepares the decision and submits it to the five-member State Personnel Board for approval. The decision is generally approved as submitted. However, the five-member board may revise the decision, assign the case to the same or another hearing officer to take additional evidence, or conduct a hearing themselves. The board may also modify or cancel the adverse action entirely. If the adverse action is modified or revoked, the employee must be paid for the period of time the adverse action was improperly in effect. Conditions of payment are contained in Government Code 19584.

The employee may file a written request for a rehearing within 30 days of receipt of the State Personnel Board's decision. The State Personnel Board shall either grant or deny the petition within 60 days. The employee, either with or without a rehearing, may petition a court for a Writ of Mandate for the hearing of the case in court.

Concern regarding a possible appeal should not be a deterrent to taking an adverse action. If the facts are documented and the adverse action is properly prepared, an appeal should present no problem. See the Supervisor's Guide for testifying at an appeal hearing (see exhibit) .

## **PROCEDURES FOR MEDICAL PROBLEMS** **1092.11**

(No. 20 October 1990)

An employee whose job performance is unsatisfactory often has a pattern of excessive absenteeism and may have a health problem, either physical or mental. In cases where this may exist, special procedures are advisable before considering an adverse action. The health and safety officer should be consulted when a medically related problem of an employee may be involved. The administrative officer should arrange to meet with the employee and the supervisor to determine the nature and extent of the problem. Often a satisfactory adjustment may be made without medical referral. However, requests for advice on matters involving technical medical determinations should be directed to the departmental medical consultant through the health and safety officer. When appropriate, the EAP coordinator should be consulted.



If an employee's job performance is adversely affected to an appreciable extent by what appears to be a medical problem, the employee must provide sufficient medical information for a determination of the problem and whether it can be satisfactorily resolved in the future. If the employee refuses to provide sufficient medical information or to submit to a medical examination, the supervisor should proceed with adverse action based on the employee's inability to satisfactorily perform the assigned work. Contact the health and safety officer on ways the medical information may be obtained.

## **AN EMPLOYEE WHO FAILS TO MEET "CONDITIONS OF EMPLOYMENT"**

**1092.12**

(No. 20 October 1990)

Whenever a permanent or probationary employee fails to meet the "Conditions of Employment," such as maintaining possession of a valid license, a credential, etc., which is required for the position or classification, an effort should be made to transfer or demote the employee to another position, the employee must be separated.

When separation is necessary, the employee should be informed of the option to voluntarily resign from the position prior to dismissal or rejection during probation. If the employee voluntarily resigns, he/she should be told that there is no eligibility for reinstatement unless the "conditions of employment" which caused the separation from the position are met.

## **REJECTION DURING PROBATIONARY PERIOD**

**1092.13**

(No. 20 October 1990)

The probationary period is regarded as a part of the selection process in that it is a trial period for the employee to demonstrate on the job that he/she has the knowledge, skills, and abilities necessary to successfully perform the duties of the position.

Management has the discretion and, more importantly, the responsibility to reject any probationer whose conduct, capacity, moral responsibility, or integrity are unsatisfactory. In concept and fact, the probationary rejection is different than an adverse action. The appointing authority has considerably more discretion to initiate the former because it is considered an extension of the selection process whereby the employee is evaluated on the job.

If the employee has permanent status in another class, he/she is entitled to return to a position in that class. If the employee came from another department, the supervisor should ensure that the personnel office notifies the other department as soon as it is known that the employee will be rejected. If the employee has a right of return, the personnel office will include that information in the rejection notice.

If the employee only has probationary status (has not attained permanent civil service status), he/she may be reinstated to the previous class at management's discretion by a permissive reinstatement.

If the employee has attained permanent status but was on probation in another class prior to accepting the current position, he/she would have reinstatement eligibility to the prior class and would complete the probationary period remaining in that class.

The courts have said that a notice of rejection on probation is insufficient if it merely states that the probationer's conduct had been unbecoming and that rejection was for the good of the service for failure to demonstrate merit. The rejection must state the facts which support the action of rejection. Employees being rejected during probation are to be given the same Skelly rights as those employees having adverse action taken against them.

The following guidelines should be followed when considering a rejection during probation:

<b>Immediate Supervisor</b>	<p>Keep employee and second-level supervisor notified of unsatisfactory progress.</p> <p>Document unsatisfactory work.</p> <p>On first probationary report, relate as many specific examples of unsatisfactory performance as possible.</p> <p>On second probationary report, indicate that rejection during probation is a <u>strong</u> possibility.</p>
<b>Administrative Officer</b>	<p>At least one month before the end of the probationary period, prepare a notice of rejection for the Regional Chief or the Deputy Director's approval. It is not necessary to wait until the end of the probationary period to reject a probationer. If you believe that performance will not reach acceptable standards, an employee may be rejected earlier. (For format of rejection during probation (<a href="#">see exhibit</a>) ).</p>
<b>Regional Chief/Deputy Director</b>	<p>Serve notice of rejection on employee at least seven working days before the end of the probationary period. Send four signed copies of the notice of rejection and the original notice of service to the departmental personnel office.</p>
<b>Departmental Personnel Office</b>	<p>Forward a copy of the notice of rejection and original notice of service to the SPB. A rejection may be amended at any time prior to receipt of an employee's appeal by the SPB. After it is appealed, the rejection may be amended by stipulation by the SPB.</p>

The notice of rejection will contain the following:

- In chronological order, acts and omissions with dates, times, places, and witnesses (if any), as well as when and how the employee was counseled.
- A statement that the employee may file, within 15 calendar days after the effective date of the rejection, a written request with the SPB for an investigation of the reasons for the rejection.
- A section explaining the employee's right of return to a former position, if applicable, as specified under Government Code section 19140.5, and an explanation that the employee has ten working days after the effective date of rejection to make a written request for reinstatement to his/her former position.
- An explanation of the employee's right to respond. This requires service at least five calendar days prior to the effective date of rejection.
- Information on the employee's earned vacation credits if the employee chooses not to reinstate or is not eligible to be reinstated.

An employee should be served a Notice of Rejection no later than seven working days before the end of the probationary period. Service is effected in the same manner described for adverse actions and shall be made prior to the effective date specified. A Notice of Rejection must be filed with the SPB within 15 calendar days of the effective date of the rejection.

If the rejected employee has a right of return to a position in CAL FIRE or another state department, he/she must be notified of the effective date of return.

It should also be noted that probationary employees may be dismissed from state service by use of a formal adverse action if the offense is serious enough to support a dismissal. If dismissed, the employee does not have a right to return to his or her former position.

[\(see next section\)](#)

[\(see HB Table of Contents\)](#)

[\(see Forms or Forms Samples\)](#)